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No. 91-905

In the Supreme Court of the United States

OCTOBER TERM, 1992

WILLIAM P. BARR, ATTORNEY GENERAL OF THE UNITED STATES, ET AL., PETITIONERS

v.

JENNY LISETTE FLORES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF FOR THE PETITIONERS

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TABLE OF AUTHORITIES

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1. Respondents and their *amici* devote a considerable portion of their various submissions (*e.g.*, Resp. Br. 10-14; ABA Amicus Br. 11-12; Child Welfare League Amicus Br. 2-3; Southwest Refugee Rights Project Amicus Br. 14-20, 24-33) to their allegations that INS has detained juveniles in facilities that do not comply with the standards required by the consent decree described at length in the petition and our brief on the merits, Pet. 6-8; Gov't Br. 11-13. As we explained in our reply brief at the petition stage and in our brief on the merits (see Reply Br. 3-4; Gov't Br. 32 n.31), those allegations are irrelevant to the issues before the Court. Before entry of the order challenged in this case, INS voluntarily consented to the entry of a binding judicial decree (Pet. App.

148a-205a) setting forth detailed standards for the juvenile-care facilities and requiring INS, "except in unusual and extraordinary circumstances" defined in the decree, to "house all juveniles detained more than 72 hours following arrest in a facility that meets or exceeds [those] standards," *id.* at 148a-149a. If respondents wish to contend formally that INS has failed to comply with the consent decree, they should initiate proceedings in the court that entered that decree.[1] If the district court concludes that INS has violated the decree, it is fully empowered to require INS to comply with it.

The legal question posed by the government's appeal to the Ninth Circuit, and its petition in this Court, is not whether the government has complied with the consent decree, but whether the district court erred in entering an additional order requiring INS —even if it complies with the consent decree—to release unaccompanied alien juveniles to unrelated adults. Because INS already had agreed to alter the conditions of confinement at the time the challenged order was entered, the conditions of confinement relevant to the challenged order are the conditions the consent decree requires INS to maintain.[2] Accordingly, the constitutional question before this Court is whether INS's policies are sufficient to justify detention under those conditions.

[1] As of July 25, respondents have not yet commenced any such proceeding. To the extent some of respondents' *amici* contend (see Southwest Refugee Rights Project Amicus Br. 14-20, 24-33) that INS has failed to adhere to the requirements of the consent decree with respect to aliens outside the Western Region (and thus not members of the class covered by the consent decree or this case), their remedy is to institute litigation in the appropriate district court.

[2] For this reason, respondents' repeated references to INS "jails," *e.g.*, Resp. Br. 5, and to INS's alleged practice of "jailing" juveniles, *e.g.*, *id.* at 9, 25, are inapposite.

2. On the merits, respondents effectively concede that the framework set forth by *Schall* v. *Martin*, 467 U.S. 253 (1984), would provide sufficient constitutional protections even if this case involved citizens, see Resp. Br. 21, and acknowledge that under *Schall*, "the range of governmental interests justifying restraints on liberty, in the case of children, includes a *parens patriae* interest in caring for and protecting those who 'are not assumed to have the capacity to take care of themselves.'" Resp. Br. 22 (quoting *Schall*, 467 U.S. at 265).[3] For several reasons, however, they contend that the result reached by the

[3] Respondents suggest at several places that the *Schall* framework requires courts to consider whether the deprivation of liberty has been "narrowly tailored" to minimize infringement. *E.g.*, Resp. Br. 16, 17, 22. But the main issue in dispute here, as in *Schall*, is whether the purpose with which the government justifies the detention is legitimate, not whether the detention is adequately related to that purpose; respondents have not identified any way in which the policy leads to detention of juveniles in a way not required by the substantive policy judgment that an alien minor should not be released to an adult who is neither a parent nor a guardian. Hence, we do not believe that respondents' formulation accurately describes the standard. Narrow tailoring is a requirement in cases where the government is infringing on a fundamental right; as the Court explained when it considered similar constitutional claims in *Schall* and *United States* v. *Salerno*, 481 U.S. 739 (1987), if detention rests on a legitimate purpose consistent with fundamental fairness, then the detention does not infringe on a fundamental right. Hence, there is no need for narrow tailoring. We note that none of this Court's opinions in *Schall*, *Salerno*, or *Foucha* v. *Louisiana*, 112 S. Ct. 1780 (1992), refers to a narrow tailoring requirement.

Ninth Circuit (if not that court's analysis) is nevertheless correct.

a. The heart of respondents' argument is the claim (Resp. Br. 22-28) that the detention at issue in this case is unconstitutional because it "serves no legitimate governmental interest." *Id.* at 22. To make that claim, however, respondents must assert (without supporting citation) that "INS largely concedes" that the interest supporting the detention is "really * * * administrative convenience." *Ibid.* Respondents then proceed to argue that administrative convenience is not a permissible basis for prolonged detention. *Id.* at 22-23. The problem with that argument, however, is that administrative convenience is not the reason for the detention. As our brief on the merits explains in detail, and as respondents themselves acknowledge in other portions of their brief (*e.g.*, *id.* at 22), the articulated basis for the detention is that it "furthers the government's interest in ensuring the welfare of the juveniles in its custody," Gov't Br. 18; see *id.* at 26 n.27 (describing Federal Register notice ascribing that purpose to the challenged regulations).

As noted above, respondents concede that this interest would be sufficient to justify some restraints on the liberty of juveniles. They nevertheless attempt to avoid the necessity of explaining why that interest is inadequate in this case by arguing that INS's interest in furthering juvenile welfare does not in fact support the policy because INS has a "blanket" policy that requires detention "without *any* factual showing that detention is necessary to ensure respondents' welfare." Resp. Br. 28. Thus, respondents reason, the only remaining interest on which INS can rely is administrative convenience. That argument, however, represents nothing more than a policy disagreement, because it criticizes INS for failing to pursue

a view of juvenile welfare that INS has not adopted, namely the view held by respondent: that it is better for alien juveniles to be released to unrelated adults than to be cared for in suitable, government-monitored juvenile-care facilities, except in those cases where the government has knowledge that the particular adult seeking custody is unfit. The policy adopted by INS, reflecting the traditional view of our polity that parents and guardians are the most reliable custodians for juveniles, is that it is inappropriate to release alien juveniles—whose troubled background and lack of familiarity with our society and culture, see Gov't Br. 12 n.16, give them particularized needs not commonly shared by domestic juveniles—to adults who are not their parents or guardians.[4] This is a "blanket" policy only in the

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[4] Respondents suggest in several places (see, *e.g.*, Resp. Br. 18, 40, 44 n.28) that INS's policy judgment on this score conflicts with the policy judgment Congress made in the provisions of Title 18 that in some cases allow the release of juveniles to unrelated adults. As we explained in our brief on the merits, see Gov't Br. 30 n.30, those provisions are inapplicable to this case, which involves aliens in INS custody on charges of deportability, not juveniles in custody on criminal charges. The only policy judgment Congress has made in this area is to grant the Attorney General plenary discretion to determine whether detention is appropriate. See 8 U.S.C. 1252(a)(1). Moreover, the provisions on which respondents rely offer significant individualized protection to children released to unrelated adults by requiring the magistrate in such a case to appoint a guardian ad litem for the child. See 18 U.S.C. 5034. INS, of course, could not take such an approach in this case, because it lacks the capacity to appoint guardians. If an individual secures an appointment as a custodial guardian from the appropriate authority, INS regulations of course generally would allow release directly to that individual. See 8 C.F.R. 242.24(b)(1); Gov't Br. 9.

sense that it requires maintaining custody in all cases in which INS believes it is appropriate to maintain custody. The fundamental issue in the case, then, is whether that policy is sufficiently legitimate to accord with the constitutional norms applicable to the alien juveniles involved in this case. For the reasons set forth in our brief on the merits (Gov't Br. 23-33), we submit that it is.

b. Respondents also attempt to distinguish *Schall* and *United States* v. *Salerno*, 481 U.S. 739 (1987), by arguing (Resp. Br. 24-25) that the detention in this case is "two major steps beyond anything yet approved in this Court's jurisprudence." *Id.* at 24. First, they contend that the detention is unacceptable because it is "indefinite." *Ibid.* Even putting to one side the obvious fact that *Schall* and *Salerno* involved citizens, while this case involves aliens, we disagree. The detention at issue in this case does not continue beyond the time necessary for proceedings to deport the individual, and terminates sooner if the individual's relatives are located or a guardian is appointed. As noted in our brief on the merits, the time in INS-monitored custody is less than 30 days for the great majority of juveniles. See Gov't Br. 13 n.19. Hence, the duration of the detention is not substantially more indefinite than that upheld in *Salerno*, which involved detention of criminal defendants during the period from the time of their arrest through completion of their criminal trials. See *Salerno*, 481 U.S. at 747.[5]

[5] To be sure, the protections of the Speedy Trial Act, 18 U.S.C. 3161 *et seq.*, do not apply in deportation proceedings, but 8 U.S.C. 1252(a)(1) does offer relief in habeas corpus proceedings in cases where "the Attorney General is not proceeding with such reasonable dispatch as may be warranted by the particular facts and circumstances in the case of any alien to determine deportability."

Second, respondents argue (Resp. Br. 24) that INS detains the juveniles "without the slightest procedural protection." As we have explained in great detail in our brief on the merits, that claim is wrong. See Gov't Br. 3-13 (describing the relevant INS procedures). Respondents correctly point out (Resp. Br. 24) that the juveniles will not have a hearing regarding the advisability of release if they indicate to INS officials, after consulting with responsible adults not affiliated with the government, that they do not wish to have a hearing, but that hardly supports respondents' claim that INS fails to afford "the slightest procedural protection."[6]

[6] Respondents argue at some length (Resp. Br. 28-33) that the constitutional issues in this case are unaffected by the fact that respondents are aliens, apparently because the case does not involve a statute granting or denying entry to a particular class of aliens. As we explained in our brief on the merits (Gov't Br. 24 & n.25), the "special judicial deference" appropriate for policy choices in the immigration context, see *Fiallo* v. *Bell*, 430 U.S. 787, 793 (1977), extends not just to Congress's exercise of legislative power, but also to the Executive's exercise of delegated power, see *Kleindienst* v. *Mandel*, 408 U.S. 753, 770 (1972). Similarly, judicial deference applies not only to policy choices associated with entry or exclusion, but to all matters involved in "the responsibility for regulating the relationship between the United States and our alien visitors." *Mathews* v. *Diaz*, 426 U.S. 67, 81 (1976).

In this regard, we are puzzled by respondents' statement (without any supporting citation) that we "flatly concede that the policy at issue has nothing to do with our country's immigration policy in general, with the deportation process in particular, or even with children's status as alleged aliens." See Resp. Br. 29. The policy at issue manifestly involves all three of those concerns.

c. Respondents support their argument that INS's policy is unconstitutional by asserting that it is inconsistent with standards articulated in a variety of juvenile justice publications. See Resp. Br. 7-8 & n.7. For several reasons, these publications are not particularly probative. First, and most obviously, these standards represent nothing more than various views regarding appropriate public policy; there is little reason to believe that they define the limits the Due Process Clause imposes on juvenile policy.

Second, none of the publications on which respondents rely addresses the unique situation presented by unaccompanied alien juveniles, who have little or no familiarity with American culture or language; who are alone, with no homes or parents; and some of whom, because of the traumatic conditions of their home countries and their journey to this country, may have serious mental disorders, see Gov't Br. 12 n.16. The assumption underlying those publications—that it would harm delinquent or abused children to remove them from the home and community environment with which they are familiar [7]—is simply inapplicable to the juveniles involved here, who already are far from whatever homes they have known. Indeed, to the extent that the standards specifically address the somewhat analogous situation of out-of-state runaways, they provide some support for automatic, nondiscretionary retention of custody.[8]

[7] See, *e.g.*, National Advisory Committee for Juvenile Justice and Delinquency Prevention, *Standards for the Administration of Juvenile Justice* 302 (1980) [hereinafter *Juvenile Justice*] (noting that detention is disfavored because "removal of a child from his/her house * * * is often emotionally 'very painful' to the child").

[8] See, *e.g.*, *Juvenile Justice*, *supra*, at 461; Institute of Judicial Administration of the American Bar Association, *Standards Relating to Interim Status: The Release, Control, and Detention of Accused Juvenile Offenders Between Arrest and Disposition* 121 (1980) [hereinafter *Interim Status*]. But see Institute of Judicial Administration of the American Bar Association, *Standards Relating to Noncriminal Misbehavior* 50 (1982) [hereinafter *Noncriminal Misbehavior*] (indicating that involuntary restraint may be inappropriate for runaway juveniles); but cf. Department of Health, Education, and Welfare, *Model Acts for Family Courts and State-Local Children's Programs* 25-26 (1975) [hereinafter *Model Acts*] (requiring detained children to be released to any suitable custodian unless the child falls within one of four narrowly drawn exceptions).

Third, all of the standards recognize a distinction between secure, jail-type facilities (characterized by barbed wire and steel bars) and less restrictive shelter-care facilities, in which open activity, recreational spaces, and appropriate care programs coexist with necessary controls and limitations, and agree that detention in shelter-care facilities can be appropriate in cases where detention in secure facilities would be inappropriate.[9] Notwithstanding respondents' frequent reference to INS "jails," see note 2, *supra*, the facilities in this case resemble shelter-care facilities much more than they do highly restrictive secure facilities. See, *e.g.*, Pet. App. 173a (provision of consent decree requiring the facilities to be operated "in an open type of setting without a need for extraordinary security measures").

3. Respondents also argue (Resp. Br. 33-43) that the existing procedures fail to accord them the process

[9] See, *e.g.*, *Interim Status*, *supra*, at 45-46, 50-52, 97-98; *Juvenile Justice*, *supra*, at 299, 301-302, 461-462; *Model Acts*, *supra*, at 26-27; *Noncriminal Misbehavior*, *supra*, at 55-56; National Advisory Commission on Criminal Justice Standards and Goals, *Corrections* 248, 257 (1973); National Conference of Commissioners on Uniform State Laws, *Uniform Juvenile Court Act* 15-16, 25-26 (1968).

due to aliens under the Fifth Amendment. Their discussion has two central flaws. First, it inaccurately characterizes the determination to be made, and second, it inaccurately describes the procedures INS uses to make that determination.

a. At the heart of respondents' analysis of the procedural due process question is the assertion that there is a great "risk of erroneous deprivation * * * through the procedures used" by INS to determine whether juveniles should be released. See Resp. Br. 35-38 (applying the test set forth in *Mathews* v. *Eldridge*, 424 U.S. 319, 335 (1976)). They support that assertion by arguing that INS cannot reliably determine without a hearing whether the juvenile is being deprived of liberty erroneously. That assertion, however, assumes the invalidity of INS's policy judgment that alien juveniles should not be released to adults who are neither their parents or guardians.[10] If that policy judgment is valid (which is the first question in this case), then the procedures are adequate, because there is little risk that the existing procedures will lead to an erroneous determination that no parent or guardian is available to take custody of the juvenile.

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[10] Respondents' discussion of the validity of the procedures in light of that policy judgment (Resp. Br. 37-38) suffers from the same flaw, as they argue that "the Government has *no* interest in detaining a child who could be released safely," *id.* at 38 (emphasis in original). That argument, again, rests on the assumption that INS has erred in determining that a concern for juveniles' overall welfare militates against release of alien juveniles to adults who are neither their parents or guardians. Respondents support that assumption by stating that "[f]or years the INS has released children to responsible adults and shelter-care programs without incident." Resp. Br. 35. The record in this case is not adequate to support that statement.

b. Respondents also attempt to demonstrate the inadequacy of INS's procedures by making several misleading statements about those procedures. For example, respondents assert (Resp. Br. 37) that there is "no procedure by which a child may demonstrate entitlement to * * * release" under the "unusual and compelling circumstances" proviso in 8 C.F.R. 242.24(b)(4). That assertion is incorrect. The juvenile can seek release under that provision—or any other provision—in a hearing before an immigration judge under 8 C.F.R. 242.2(d), with review in the Board of Immigration Appeals and, ultimately, the federal courts. See Gov't Br. 7-8.

Similarly, respondents fault INS's procedures as relying on an expectation that juveniles "can be expected to ask for a hearing to review restrictions on their liberty." Resp. Br. 40. That argument, however, ignores several aspects of INS's procedures designed to result in hearings in cases where there is a serious claim that detention would be inappropriate. First, and most importantly, INS regulations require officers, before presenting any forms to the juvenile, to ensure that the juvenile "in fact communicate[s] with either a parent, adult relative, friend, or with an organization found on the free legal services list." 8 C.F.R. 242.24(g) and (h); see Gov't Br. 4-5. It is fair for INS to presume that those individuals will counsel the juvenile regarding the appropriate course of action. Second, INS procedures do not require the juvenile to take any complicated or sophisticated action in order to receive a hearing: the juvenile will receive a hearing unless he either checks a box specifically indicating he does not want a hearing, or refuses to complete the relevant form. See Gov't Br. 5-8.

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Respondents have failed to show that principles of due process require INS to hold hearings on an unrelated adult's fitness to act as a child's custodian instead of deferring to determinations made under state law in guardianship proceedings. At bottom, INS reached the reasonable judgment that an unrelated adult who lacks the interest or qualifications to become a guardian under state law should not be given custody. On the other hand, any unrelated adult who does make that commitment and is found to be fit under state law will be given custody under INS regulations. There accordingly is no reason INS automatically must hold hearings on the parental fitness of unrelated adults. Respondents' contention (Resp. Br. 41) that children "cannot reasonably be expected to invoke such [guardianship] procedures from the confines of remote INS detention facilities" misses the point. It is the unrelated adults seeking to obtain custody who must institute such guardianship appointment proceedings, not the children, and not INS.[11]

4. Respondents also claim (Resp. Br. 43-47) that the detention at issue in this case is invalid because

[11] Respondents also state without supporting citation that "children in INS detention [are] simply ineligible for guardianships." Resp. Br. 41. The record establishes only that the local courts in Los Angeles have expressed unwillingness to grant temporary guardianship to juveniles in INS custody; as we explained in our reply brief at the petition stage, those courts reached that decision in response to an abuse of temporary guardianship appointments pursuant to which temporary guardians appointed for alien minors typically failed to appear with their wards for permanent guardianship hearings. See Reply Br. 4 n.4. Moreover, nothing in the record suggests that the juveniles are ineligible for permanent guardianships or that the substantial portion of the juveniles outside of Los Angeles are ineligible for temporary guardianship proceedings.

it exceeds the authority granted to the Attorney General under 8 U.S.C. 1252(a).[12] That claim is meritless. Section 1252(a)(1) vests the Attorney General with broad discretion to determine whether aliens should be detained pending deportation:

> [A]ny * * * alien taken into custody [on the basis of deportability] may, in the discretion of the Attorney General and pending [the] final determination of deportability, (A) be continued in custody; or (B) be released under bond in the amount of not less than $500 with security approved by the Attorney General, containing such conditions as the Attorney General may prescribe; or (C) be released on conditional parole.[13]

As the Court explained last Term in *INS* v. *National Center for Immigrants' Rights* (*NCIR*), 112 S. Ct. 551 (1991), whatever the outer bounds of the Attorney General's authority, any decision to detain that is "consistent with [an] established concern of immigration law" is "squarely within the scope of the Attorney General's statutory authority." *Id.* at 558. In this case, the decision to detain is based on concern for the welfare of the alien juveniles who

[12] Although respondents did not raise this issue in their brief in opposition to the petition for a writ of certiorari, the government has no objection to the Court's resolution of the issue, which was raised before and decided by the court of appeals, see Pet. App. 80a-93a.

[13] The subsequent sentences of the provision reinforce the Attorney General's broad discretion by granting him broad discretion to revoke any bond or parole he may choose to grant, and by limiting the availability of judicial review except in cases where he is not "proceeding with * * * reasonable dispatch * * * to determine deportability." 8 U.S.C. 1252(a)(1).

come into the Attorney General's custody. Because concerns related to the welfare of aliens in the Attorney General's custody necessarily fall within the Attorney General's responsibility to detain and deport aliens, the regulation implements a statutorily permissible concern.

Respondents suggest, however, that *NCIR* requires the Attorney General to "exercise discretion to detain on the facts of an individual case." Resp. Br. 45 (emphasis omitted). To be sure, the Court in *NCIR* suggested that it would be improper to require "no-work" conditions in release bonds without "an initial, informal determination" as to whether the aliens were eligible to work. 112 S. Ct. at 559. But that suggestion required nothing more than that the Attorney General develop procedures to ensure that he did not detain aliens based on policies that did not apply to them, for example, by requiring "no-work" conditions in the bonds of aliens who lawfully could seek employment in this country. In this case, that rule would require "an initial, informal determination" as to whether the juvenile appears to be deportable and as to whether a parent or guardian is available to take custody. As we have explained at length, INS procedures provide for just such a determination. See Gov't Br. 3-10.[14]

[14] Respondents suggest in passing that the policy in question violates "the equal protection guarantee" of the Fifth Amendment. See Resp. Br. 44 n.28. First, they argue that a policy allowing release to parents and legal guardians, but not to other adults, "lacks any rational connection to the likelihood that a child will be harmed or neglected following release." *Ibid.* It is sufficient to respond to that argument to point out that this country's long tradition of reposing custody over juveniles in either parents or duly appointed guardians provides adequate support for the distinction.

Second, respondents argue that it is "palpably irrational" to detain unaccompanied alien juveniles in INS custody when the federal government has procedures that permit release of juveniles arrested for juvenile delinqency to unrelated adults. Resp. Br. 44 n.28 (citing 18 U.S.C. 5034). Those procedures, of course, are not principally applicable to alien juveniles; moreover, those procedures require appointment of a guardian ad litem for an unaccompanied juvenile, who can ensure that the juvenile receives adequate care. See 18 U.S.C. 5034. INS does not have the capacity to appoint a guardian ad litem and thus rationally has chosen to defer to guardianship determinations made by state courts with expertise in such matters. See *Ankenbrandt* v. *Richards*, 112 S. Ct. 2206, 2215 (1992) (noting the "special proficiency developed by state tribunals over the past century and a half in handling" domestic relations issues). Hence, in light of the special needs of alien juveniles for whom no parent or guardian is available, it is rational for INS to conclude that care in special government-monitored facilities is appropriate.

5. *Amicus* Amnesty International suggests (Amnesty Int'l Amicus Br. 11-13) that the policy at issue in this case is unlawful because it is inconsistent with the United Nations Convention on the Rights of the Child, U.N. G.A. Doc. A/44/736 (1989). That suggestion is incorrect, principally because, as Amnesty International acknowledges (Amnesty Int'l Amicus Br. 11 n.10), the United States has not ratified the Convention.[15]

[15] Indeed, contrary to the representation in Amnesty International's brief (Amnesty Int'l Amicus Br. 11 n.10), the Office of the Legal Advisor of the Department of State has advised us that the United States has not even signed the Convention. See also *Children's Rights in America: U.N. Convention on the Rights of the Child Compared with United States Law* iv (Cynthia Price Cohen & Howard A. Davidson eds. 1990) [hereinafter *Children's Rights in America*] (noting that the United States had not signed the Convention as of 1990).

Moreover, even if the Convention were binding in the United States, it would cast no doubt on the legitimacy of INS's policy. The principal provision on which Amnesty International relies, Article 37(b), does not address the specific circumstances of this case, but generally provides: "No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time." *Reprinted in Children's Rights in America*, *supra*, at xxvi.[16] As we have argued at length in our briefs in this case, the detention is neither unlawful nor arbitrary, but represents a reasoned exercise of the Attorney General's discretion to detain deportable aliens. Similarly, detention is used as a measure of last resort, when no parent or legal guardian is available. INS's decision to rely on parents and legal guardians as the legitimate caretakers of displaced children in fact resonates with the Convention's frequent reference to the State's duty to rely on those individuals.[17]

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[16] Amnesty International also suggests (Amnesty Int'l Amicus Br. 11-12) that INS's policy is inconsistent with the requirement set forth in Article 37(d) that States afford "the right to challenge the legality of the deprivation of [a juvenile's] liberty before a court or other competent, independent and impartial authority," *reprinted in Children's Rights in America*, *supra*, at xxvi. As described in detail in our brief on the merits, INS's procedures afford that right. See, *e.g.*, Gov't Br. 7-8.

[17] See, *e.g.*, Article 14.2, *reprinted in Children's Rights in America*, *supra*, at xvi ("States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child."); Article 18.1, *reprinted in id.* at xviii ("Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child."); Article 18.2, *reprinted in ibid.* ("States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities.").

Similarly, the Convention recognizes the legitimacy of INS's interest in caring for unaccompanied alien juveniles, by providing that "[a] child temporarily or permanently deprived of his or her family environment * * * shall be entitled to special protection and assistance provided by the State." Article 20.1, *reprinted in Children's Rights In America*, *supra*, at xviii. In fact, the Convention provides that States must "ensure alternative care for such a child," Article 20.2, *reprinted in id.* at xix, and states that "[s]uch care could include, *inter alia*, foster placement, * * * or if necessary placement in suitable institutions for the care of children," Article 20.3, *reprinted in ibid.*[18] INS's procedures are fully consistent with those provisions.

For the foregoing reasons and those set forth in our brief on the merits, it is respectfully submitted that the judgment of the court of appeals should be reversed.

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JULY 1992

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[18] Moreover, the aspects of the consent decree that require the care to be "accomplished in a manner which is sensitive to culture, native language and the complex needs of these minors," Pet. App. 157a, ensure that the facilities satisfy the obligation, recognized by the Convention, to pay "due regard * * * to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background," Article 20.3, *reprinted in Children's Rights in America*, *supra*, at xix.

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